

SCHEDULE AOUTLINE OF SERVICES

In addition to the services required to be performed by Construction Manager pursuant to the other provisions of the Contract Documents (including the Agreement and General Conditions), Construction Manager shall also perform the following construction management services as part of the Contract Document requirements:

- A. Coordinate all activities of Owner, A/D/E Service Provider, Construction Contractor and other vendors in connection with the Project Improvements, in order to:
 - (i) Meet Owner's goals, needs and requirements with respect to the Project Improvements; and
 - (ii) Cooperate with A/D/E Service Provider in connection with A/D/E Service Provider's designing the Project Improvements so as to conform to Owner's budgetary constraints and to all governmental requirements, including building and zoning codes, handicapped, environmental, fire and safety ordinances.
- B. Cooperate with Owner and A/D/E Service Provider in achieving mutually agreed upon project budget requirements and design parameters. Provide cost evaluation of alternative materials and systems.
- C. Review designs during their development for constructibility and value engineering purposes. Advise Owner and A/D/E Service Provider on Site use and Project Improvements, selection of materials, building systems and equipment and methods of project delivery.
- D. Make recommendations for pre-qualification criteria for bidders and develop bidders interest in the Project Improvements. Establish bidding schedules. Issue bid packages to bidders. Conduct pre-bid conferences to familiarize bidders with the contract documents and management techniques and with special systems, materials or methods. Receive bids, prepare bid analysis and make recommendations to Owner for the award of the Construction Services Agreement or rejection of bids. Conduct pre-award conferences with successful bidders. Prepare the trade packages and advise Owner on the acceptability of the Construction Services Agreement, subcontractors and material suppliers proposed by the Construction Contractor.
- E. Provide administration, management and related services as required to monitor work of the trade contractors and material suppliers with each other and with the activities and responsibilities of Owner, A/D/E Service Provider and the Construction Contractor hired for all or any portion of the Project Improvements, to complete the Project Improvements in accordance with Owner's objectives for cost, time and quality. Provide sufficient organization, personnel and management to carry out the requirements of the Contract Documents.
- F. Schedule and conduct preconstruction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Prepare and distribute minutes of such meetings to all participants in such meetings.
- G. Endeavor to achieve satisfactory performance from each Construction Contractor. Recommend courses of action to Owner when the obligations of any Construction Contractor are not being fulfilled, and when and if the non-performing party will not take satisfactory corrective action.
- H. Revise and refine the approved estimate of construction costs, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed.
- I. Recommend necessary or desirable changes in the Project Improvements to A/D/E Service Provider and Owner, review requests for changes, assist in negotiating trade contractor's change proposals, submit

recommendations to Owner, and if they are accepted, prepare change orders for Owner's authorization and approval.

- J. Develop and implement procedures for the review and processing of application by Construction Contractor for progress and final payments. Make recommendations to Owner for payment.
- K. Assist in obtaining building permits and special permits for permanent improvements, excluding permits required to be obtained directly by the various trades. Assist in obtaining approvals from authorities having jurisdiction over the Project Improvements.
- L. Assist in selecting and recommending to Owner to retain the professional services of surveyors, special consultants and testing laboratories and provide coordination of their services.
- M. Determine in general that the work of each Construction Contractor is being performed in accordance with the requirements of its Construction Services Agreement, and guard Owner against defects and deficiencies in the work. As appropriate, require special inspection or testing, or make recommendations regarding special inspection or testing of work not in accordance with the provisions of the Construction Services Agreement therefor, whether or not such work is then fabricated, installed or completed. Reject work which does not conform to the requirements of the Construction Services Agreement.
- N. Retain evidence of insurance from Construction Contractor, subcontractors and other vendors.
- O. Receive from Construction Contractor and review all shop drawings, product data, samples and other submittals for completeness. Coordinate them with information contained in related documents and transmit to A/D/E Services Provider for review and approval with a copy to Owner. In collaboration with A/D/E Service Provider, establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals in accordance with the Project Schedule.
- P. Arrange for delivery and storage, protection and security for Owner's purchased materials, systems and equipment which are a part of the Project Improvements, until such items are incorporated into the Project Improvements which are to be installed by Construction Manager or which Construction Manager is required to take delivery of as part of the Project. Construction Manager shall have general responsibility for the site as a whole.
- Q. When Construction Contractor's work or designated portion thereof is substantially complete, prepare for Owner a list of incomplete or unsatisfactory items and a schedule of their completion. Assist in conducting the inspection of the work. Evaluate the completion of the work of Construction Contractor and make recommendations when such work is ready for final inspection. Secure and transmit to Owner required guarantees, affidavits, releases, bonds and waivers. Deliver all keys, manuals, as-built record drawings (in Owner's standard CAD format) and maintenance documents to Owner.

SCHEDULE B
GENERAL CONDITIONS ITEMS

Code	Description
1.021	Project Manager
1.022	Project Superintendent (Full Time)
1.023	Project Secretary
1.024	Mechanical/Electrical Coordinator
1.030	Trailer/Mobile Office including Furniture, Utilities & Expenses
1.031	Office Supplies
1.032	Storage Shed
1.033	Telephones
1.035	Water- for contractor use in job trailers
1.036	Xerox/Fax
1.037	Communications
1.038	Travel, Toll, Parking (local only, Long distance travel will be at owners discession/approval)
1.041	Computer
1.403	Blue Print Reproduction
1.506	Temp. Toilets
1.601	Tools (hand tools not related to equipment needed for building construction)
1.602	Truck
1.603	Automobile
1.606	Gasoline
1.680	Engineering Tools
1.801	Freight, Postage, Etc. (UPS, Fedex, overnight delivery ; not related to equipment delivery)
1.901	Safety & Fire Protection (for Construction Manager's trailer/office only)
1.906	Owner/Architect Field Office (furnished & equipped)
1.907	Progress Photographs
1.908	Temporary Utilities - Electrical, telephone, water and waste plumbing for field office
1.910	Field office cleaning
1.911	Pest & vermin control for Construction Manager's trailer/office
1.915	Construction signage and project Identification signage
1.920	Scheduling (computer)
1.999A	Insurance, to the extent not provided by Owner

Schedule B-1

BANC ONE 07838
 (CONFIDENTIAL)

SCHEDULE C-1

SINGLE PROJECT CONSTRUCTION SERVICES AGREEMENT – SHORT FORM

Schedule C-1-1

BANC ONE 07839
(CONFIDENTIAL)

SHORT FORM AGREEMENT AND GENERAL CONDITIONS
FOR
CONSTRUCTION SERVICES
CONTRACT NO. _____

Pre-bid meeting ___ will/ ___ will not be held. If applicable, the pre-bid meeting will occur at _____
A.M./P.M. on _____, at _____.

When completed, return two (2) executed copies of this Short Form Agreement and General Conditions for
Construction Services if by U.S. mail addressed to Owner c/o _____,
_____, Mail Code _____,
if hand delivered to Owner c/o _____,
_____ Floor, _____, in each case for receipt by Owner by or before _____
A.M./P.M. on _____.

Owner:
Banc One Building Corporation
1 Bank One Plaza
Mail Code IL1-0503
Chicago, IL 60670-0503

Construction Contractor:

Owner's Project Manager:
Karl Wm. Auwarter, VP, Real Estate

Construction Contractor's Key Staff Members:

Superintendent: _____

Assistant Superintendent: _____

Other Key Staff:

Title	Name
_____	_____
_____	_____
_____	_____
_____	_____

Site:

Construction Manager:
Tishman Construction Corporation of Maryland
666 Fifth Avenue
New York, New York 10103-0256

Construction Contractor's Authorized Signatories:

1. _____
2. _____
3. _____
4. _____

This Short Form Agreement and General Conditions for Construction Services is made as of the _____
day of _____, ("Agreement") between Owner and Construction Contractor. This Agreement,
including all exhibits and schedules attached hereto, together with all drawings, specifications and modifications
issued after the execution of this Agreement and delivered to Construction Contractor, are herein called the
"Contract" and the "Contract Documents". Owner and Construction Contractor agree to the terms and conditions
set forth in the Contract Documents.

- The project ("Project") consists generally of, and a general description of the Work is (and, if applicable, a
more detailed description of the Work is set forth on Exhibit C), as follows: _____

- Construction Contractor acknowledges it received the plans and specifications that are listed on, and, as
applicable, a more detailed description of the Work as set forth on, Exhibit C hereto.
- Written notice shall be deemed to be duly served if served to Owner or Construction Contractor, as the case
may be, at the respective address set forth below in accordance with Section 20 of the General Conditions
attached hereto on Exhibit E ("General Conditions"):

If to Owner, addressed to:

Attention: _____

If to Construction Contractor, addressed to:

Attention: _____

With a copy to:

Tishman Construction Corporation of
Maryland
666 Fifth Avenue
New York, New York 10103-0256
Attention: _____

4. The "Contract Sum" is a fixed price equal to \$ _____.

This Agreement shall be effective only when (i) Owner executes and delivers this Short Form Agreement and General Conditions for Construction Services, (ii) all appropriate blanks contained herein are completed, and (iii) each of the Exhibits A, B, C, D, and E (each of which is hereby incorporated herein) has been completed and attached hereto.

5. Construction Manager hereby represents to Construction Contractor that (i) Owner has retained Construction Manager to act as Owner's construction manager to arrange for the construction of the Project; and (ii) Construction Manager has full power and authority and is duly authorized to execute and deliver this Contract with and to Construction Manager upon the terms and conditions set forth herein. All communications from Owner to Construction Contractor shall be delivered either (i) to Construction Manager with instructions to forward such communications to Construction Contractor, or (ii) directly to Construction Contractor with a simultaneous notification to Construction Manager. All written approvals and actions required of or permitted to be taken by Owner under the Contract shall be effective if executed by either Owner or by Construction Manager acting on Owner's behalf, and Construction Contractor shall be permitted to rely on all such written approvals unless and until Owner (and not Construction Manager) notifies Construction Contractor in writing to the contrary. Construction Contractor shall be entitled to rely on information communicated through the Construction Manager and work with the Construction Manager until Owner provides written notice of the termination of such Construction Manager's responsibilities or a substitution of such Construction Manager.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

CONSTRUCTION CONTRACTOR:

FIRM: _____

By: _____

Name: _____

Title: _____

OWNER:

BANC ONE BUILDING CORPORATION,
an Illinois Corporation

By: Tishman Construction Corporation of
Maryland, as Banc One Building Corporation's
agent and construction manager

By: _____

Name: _____

Title: _____

LIST OF EXHIBITS
TO
SHORT FORM AGREEMENT AND GENERAL CONDITIONS
FOR CONSTRUCTION SERVICES

EXHIBIT A	COMPLETION SCHEDULE
EXHIBIT B	SCHEDULE OF VALUES AND ANTICIPATED DRAW SCHEDULE
EXHIBIT C	PLANS AND SPECIFICATIONS
EXHIBIT D	WORK AREA
EXHIBIT E	GENERAL CONDITIONS

EXHIBIT A

COMPLETION SCHEDULE

Note: This Schedule must include the dates for Substantial Completion and Final Completion.

EXHIBIT B

SCHEDULE OF VALUES AND ANTICIPATED DRAW SCHEDULE

EXHIBIT C

PLANS AND SPECIFICATIONS

C-1

Short Form Agreement and General Conditions for Construction Services 3/03/2003

BANC ONE 07845
(CONFIDENTIAL)

EXHIBIT D

WORK AREA

EXHIBIT ESHORT FORM AGREEMENT FOR CONSTRUCTION SERVICES
GENERAL CONDITIONS

1. Contract: The Contract Documents, including with any exhibits, drawings and specifications referred to herein shall constitute the entire agreement between the parties. Owner objects to and shall not be bound by any past or future terms and conditions, or course of conduct not set forth herein, unless set forth in writing and signed by an authorized representative of Owner after the date hereof. Any additional or inconsistent terms not so agreed upon by Owner in writing shall be null and void. Acceptance of any purchase order, confirmation order, work order, invoice or other forms of this kind shall not modify the terms of the Contract Documents. Any performance by Construction Contractor of this Project shall be deemed acceptance by Construction Contractor of this Contract. No claims for changes or extras will be permitted for work or materials and no change in price or time shall be allowed unless approved in writing and in advance by Owner. All terms defined either in the Agreement or in these General Conditions shall have the meaning ascribed thereto wherever used in the Contract Documents. Terms and abbreviations not specifically defined in the Contract Documents which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

2. Work: Construction Contractor shall perform or cause to be performed, in a first class manner and in accordance with the Contract, all work set forth in, contemplated by or reasonably inferable as being necessary to produce the intended results from, the plans and specifications listed on Exhibit C to the Agreement, including all labor and materials to complete the general description of such work contained in the Agreement (collectively all such labor, materials, and services to be provided by Construction Contractor are herein called the "Work"). Construction Contractor shall cause its Key Staff Members, as listed on page 1 of the Agreement, to be continuously engaged in the Work and Construction Contractor shall not substitute any such Key Staff Member or alter their responsibilities related to the Work without Owner's prior written consent. Construction Contractor's Authorized Signatories, as listed on page 1 of the Agreement, are duly authorized and have full power to bind Construction Contractor. Construction Contractor shall maintain at the Work Area for Owner one record copy of all current and up-to-date plans and specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes made during construction, and approved shop drawings, product data and samples. No review or receipt of such records by Owner shall be a waiver of any deviation from the Contract Documents or in any way relieve Construction Contractor from Construction Contractor's responsibility to perform the Work in accordance with the Contract Documents unless such deviations are specifically noted in writing by Construction Contractor and specifically approved in writing by Owner. Construction Contractor shall furnish to Owner four complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment furnished under the Contract Documents and any additional data specifically requested under the various sections of the specifications for each division of the Work. The manuals shall be arranged in proper order, indexed and suitably bound. Construction Contractor shall pay all royalties and license fees applicable to the Work and shall not unlawfully use or install any patented article. All Work shall be subject to inspection and acceptance by Owner. Any inspection and acceptance by Owner shall not constitute a waiver of any of its rights hereunder.

3. Progress and Completion: Subject to adjustments by change orders approved in advance and in writing by Owner, Construction Contractor shall begin the Work on the date of the execution and delivery of the Agreement or such later date as set forth in the Completion Schedule set forth as Exhibit A to the Agreement ("Completion Schedule") and shall carry the Work forward expeditiously with adequate forces and shall achieve substantial completion and final completion, and all milestone dates set forth therein, if any, within the time periods provided therefor in the Completion Schedule. Substantial completion shall include the following: (i) all systems relating to the Work shall have been fully commissioned, in accordance with industry standards and standards set forth in the Contract Documents for documenting and verifying the operation and performance of such systems in conformity with the design intent, (ii) all improvements included in the Work shall be ready for occupancy for their intended purposes, (iii) only remaining Work to be performed are punch list items (which must be capable of being completed within 30

days), and (iv) a certificate of occupancy, as required, shall have been duly issued by the applicable governmental authorities.

4. Performance: Construction Contractor shall perform all of its obligations under the standard of care of a first class contractor. All references in the Contract Documents to a "first class contractor", or any similar words or phrases as used in reference to Construction Contractor shall mean Construction Contractor's best skill and judgment in accordance with the practice exercised by a fully competent, first class contractor whose competence and professionalism equals that of contractors with at least ten (10) years experience in performing the work and services and constructing projects similar in scope and complexity to those required of Construction Contractor under the Contract Documents for large corporate and institutional clients in the greater metropolitan area surrounding the Project. Construction Contractor shall assume all duties under this Contract as an independent contractor, and shall not be deemed for any purpose to be an agent, servant or representative of Owner. Owner shall have no direct control of Construction Contractor, its agents or subcontractors in the performance of work hereunder. Nothing contained herein shall be construed to be inconsistent with such independent contractor relationship.
5. Use of Premises: Construction Contractor shall perform all Work in such a manner as to cause minimum of interference with Owner's operations and the operations of other contractors on or near the Site. Upon completion of the Work, Construction Contractor shall restore the Site to its original condition (as modified by the Work) and leave said Site clean and free of all tools, equipment, waste materials and rubbish. Construction Contractor shall be liable for any environmental damage (including cleanup cost to properly dispose of hazardous substances or waste) caused by or related to the Work.
6. Compliance with Government Regulations and Permits: Construction Contractor shall perform the Work in accordance with all laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the Site ("Government Requirements"), and otherwise perform Construction Contractor's obligations contemplated in the Contract Documents. Construction Contractor acknowledges that Construction Contractor has visited the Site, examined all conditions affecting the Work, and is fully familiar with all of the conditions thereon and affecting the Work and the Work Area. Construction Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved (or approved as noted) shop drawings, product data or samples for such portion of the Work. Construction Contractor shall give all notices and comply with all Government Requirements bearing on the performance of the Work. Construction Contractor shall procure all permits (including, without limitation, the general building permit), licenses and certificates of inspection or occupancy necessary to complete the Work and occupy the Work Area, and shall deliver same to Owner promptly upon completion of the Work or at Owner's request. Prior to Construction Contractor's application for a building permit, Construction Contractor shall secure Owner's approval of the project value to be used for permit purposes.
7. Hazardous Materials:
 - (a) Construction Contractor shall not use, in connection with the Work, any material containing asbestos as defined by the United States Environmental Protection Agency 40 CFR CH. 1 (7-1-00 Edition) Subpart M-National Emission Standard for Asbestos and the Occupational Safety and Health Administration, Part 1910: Occupational Safety and Health Standards, Subpart Z: Toxic and Hazardous Substances, Standard 1910.1001: Asbestos.
 - (b) Construction Contractor shall not use, in connection with the Work, any hazardous waste, toxic substance or related materials, including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 et seq., Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802, and the Resource Conservation Act and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq. ("Hazardous Materials") in such manner as would violate any Government Requirements or would cause any damage or a risk of any damage to the

environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner.

8. Safety Provisions: Construction Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Construction Contractor shall take all reasonable precautions for the safety of and provide all reasonable protection to prevent damage, injury or loss to all of its employees at the Site and all other persons who may be affected thereby, and all property at the Site or otherwise used in connection with the Work. Construction Contractor shall maintain a drug and alcohol free workforce at all times while on the Site.
9. Building Owner/Manager: Owner reserves the right to designate, by notice to Construction Contractor (if not so designated on Page 1 of the Agreement) one or more persons or entities that is Owner or manager of the Site or the existing building within which the Work is to be performed (if any, the "Building") as a Building Owner/Manager. To the extent a Building Owner/Manager is so designated, all provisions of this Agreement relating to the Building Owner/Manager shall apply, and mean and refer, to the persons or entities so designated. To the extent a Building Owner/Manager is not so designated, no force or effect shall be given to those provisions to the extent related to the Building Owner/Manager.

If Building Owner/Manager is different from Owner, Construction Contractor agrees that: (a) Construction Contractor shall at Construction Contractor's sole cost and expense arrange directly with Building Owner/Manager for all access to the Work Area, storage at the Site, use of elevators and other vertical transportation, temporary utilities and facilities; and (b) Construction Contractor shall at Construction Contractor's sole cost and expense comply and cause others to comply with all requirements of Building Owner/Manager with respect to the conduct of its activities at the Site, and the activities of the employees of Construction Contractor and subcontractors, so that the foregoing shall not interfere with the activities of Building Owner/Manager or other tenants of the Building.

10. Changes in the Work: Contract Sum and the Completion Schedule (and each portion thereof) may be changed only by Change Order signed by Owner and Construction Contractor.
11. Insurance: Owner has elected to implement an Owner Controlled Insurance Program ("OCIP") in accordance with Schedule A, attached herein, that will provide Workers' Compensation, Employer's Liability, General Liability and Excess "Umbrella" Insurance for the Construction Manager and all eligible Construction Contractors and sub-contractors of every tier providing direct labor on the Project. Owner agrees to pay all premiums associated with the OCIP including all deductibles or self-insured retentions unless otherwise stated in the Contract Documents.

The Owner will also provide, at its own cost, builder's risk coverage as outlined in Schedule A.

12. Books/Audit: Construction Contractor will keep complete and detailed books and records which will accurately reflect costs. Such books and records and all supporting data shall, at all reasonable times and upon reasonable notice, until three years after the Work has been finally completed, be open for audit, inspection and copying by Owner and its authorized representatives.
13. Payments:
 - (a) Subject to additions and deductions by change orders as provided for in the Contract Documents, Owner shall pay Construction Contractor, pursuant to the Contract Documents, for performance of the Work, the Contract Sum set forth in the Agreement. Included within the Contract Sum are all sales, consumer, use, personal property and other taxes applicable to the Work or any portion thereof provided by Construction Contractor. Owner shall retain from each progress payment a retainage (the "Retainage") in the amount of 10% of the Contract Sum eligible for payment to Construction Contractor until the Work is finally complete. Owner shall not be obligated to release the Retainage for subcontractors who have performed work in connection with the Work until all of the Work is complete. On or before the 20th calendar day of each month, Construction

Contractor shall submit an itemized application for payment in Owner's format, containing all information and supported by such documentation as Owner may request for Work completed during the previous month. The application for payment shall set forth the amounts due, subject to Retainage, Construction Contractor and any subcontractors or suppliers which Construction Contractor has subcontracted with to perform any portion of the Work. The Work shall be performed free from all claims, liens and charges whatsoever. Construction Contractor shall submit the following documents with each application for payment: (a) sworn statement listing the names of any subcontractors or suppliers furnishing labor, material, equipment or services in connection with the Work (said statement shall state the amount of each subcontract or purchase order, the amount for which payment is requested and the amount theretofore paid by Construction Contractor to said subcontractors and suppliers); and (b) waivers of lien legally sufficient to waive any mechanic's lien claim Construction Contractor, each subcontractor and supplier may have for Work performed or materials supplied by any of them for which payment is requested. Additionally, a final waiver of lien from such parties shall be submitted by Construction Contractor with each party's request for final payment. All lien waivers, applications for payment and sworn statements shall be properly notarized, duly executed and acknowledged by the party providing said documents. Claims for extra costs shall not be valid unless approved in advance and in writing by Owner. Final payment shall not be due or payable until the Work is finally complete (including all punch list items being completed). The acceptance of final payment by Construction Contractor shall constitute a waiver of all claims by Construction Contractor against Owner, except those previously made and specifically reaffirmed in writing with Construction Contractor's application for final payment and still unsettled.

- (b) Construction Contractor warrants that title to all Work, materials and equipment covered by an application for payment will pass to Owner either by incorporation in the Project or upon the receipt of payment by Construction Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances ("Liens"). However, Construction Contractor shall remain responsible for the care and custody of such materials, equipment, and Work until such time as Owner accepts (in writing) such responsibility. Construction Contractor further warrants that no Work, materials or equipment covered by an application for payment will have been acquired by Construction Contractor, or by any other person performing Work at the Site of furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Construction Contractor or such person. In the event that a lien is filed of record as a claim against the Site, the Building, or other improvement on or around the Site or against any monies due or to become due for any Work performed, or any materials furnished for the Work, then in addition to any other right or remedy Owner has under the Contract Documents or at law or equity and unless such lien is the result of Owner's failure to pay Construction Contractor amounts due under the Contract for Work and concerning which there is no dispute, Owner may withhold from Construction Contractor a reasonable amount until said claim or lien has been discharged or there has been furnished to Owner security satisfactory to Owner such that Owner will be protected and held harmless from any liability, fees or costs in connection therewith. In addition, if Construction Contractor fails to remove any such lien by payment or release or to furnish to Owner such satisfactory security, within ten (10) days after written demand, such failure shall constitute a default hereunder. Without limitation of Owner's other rights and remedies, if such a default occurs, Owner may, but shall not be obligated to, procure a bond or other security reasonably calculated to protect Owner from any liability in connection with such default and Owner may back-charge Construction Contractor for all costs and expenses incurred in connection therewith.

14. Owner's Project Manager: The Project Manager identified in the Agreement, or any substitute designated as such in writing from Owner to Construction Contractor, is Owner's representative with full power to bind Owner.
15. Owner's Consultants: Owner reserves the right to engage third parties, including architects and engineers, to assist Owner in various capacities related to the Work and Contract Documents, including in the administration of the Contract Documents. Construction Contractor agrees to cooperate with all such

consultants, including architects and engineers, in all aspects of the Work and Contract Documents, including the administration thereof.

16. Ownership and Use of Documents: As between Owner and Construction Contractor, all plans and specifications for the Work and other material related to the Work prepared by Construction Contractor or furnished to Construction Contractor by Owner are and shall remain Owner's property, and shall be used by Construction Contractor only with respect to the Work. Construction Contractor acknowledges that a confidential relationship has been established between Owner and Construction Contractor and that Owner may communicate to Construction Contractor certain confidential information to enable Construction Contractor to render the services required in the Contract.
17. Liability and Indemnity: To the fullest extent permitted by law, Construction Contractor shall indemnify, defend, save and hold Owner; its affiliated companies; Owner's Lender, if any; Owner's tenants, if any; the Building Owner/Manager, if different from Owner; Construction Manager; and the shareholders, members, partners, officers, employees of all of them (collectively the "Indemnitees") harmless from and against all loss and expense (including reasonable attorneys' fees and other costs and expenses) by reason of the liability imposed by law upon the Indemnitees, or any of them, for damages because of Construction Contractor's breach of the Contract Documents and for damages because of bodily injury, occupational sickness or disease, including death resulting therefrom, sustained by any employees of Construction Contractor or subcontractor while at the Site where Work under the Contract is being conducted or elsewhere, while engaged in the performance of Work under the Contract, or sustained by any person or persons other than employees of Construction Contractor, however such injuries may be caused, including such injuries as are caused by concurrent negligence of the Indemnitees, or any of them, whether attributable to a breach of statutory duty or administrative regulation or otherwise, and such injuries for which liability is imputed to the Indemnitees, or any of them, or claims for property damage because of injury to or destruction of tangible property (other than the Work itself to the extent the damage or injury thereto results from a loss covered by Owner's policy of builder's risk insurance, including loss of use resulting therefrom), directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the Work or the failure to protect the Work or the Site, or the condition of the Work, the Site, adjoining land or driveways, or streets or alleys used in connection with the performance of the Work. Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section include, subject only to the limitations contained in this Section, all liabilities, damages, losses, claims, demands and actions on account of bodily injury, death or property loss to an Indemnitee or to any other persons or entities, whether based upon, or claimed to be based upon, statutory (including workers' compensation), contractual, tort or other liability of any Indemnitee. In addition, such defense and indemnity shall include all liabilities, damages, losses, claims, demands and actions for defamation, false arrest, malicious prosecution or any other infringement of similar rights. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence, if any, to the extent not permitted by law or to eliminate or reduce any other indemnification, right or remedy which Owner has under Contract Documents or otherwise. Construction Contractor shall be notified of any claims against any of the Indemnitees of which Owner has notice, and Owner shall give Construction Contractor such reasonable information and assistance as may be requested by Construction Contractor to perform the obligations set forth in this Section; provided, however, that (i) failure to notify Construction Contractor of any claim shall not relieve Construction Contractor of any obligations contained in this Section; and (ii) the obligation of Owner to give information and assistance shall be at Construction Contractor's expense and shall not obligate Owner to incur any expense or liability. Construction Contractor expressly understands and agrees that insurance protection required by any provision of the Contract Documents, or otherwise provided by Construction Contractor, shall in no way limit the responsibility to indemnify, save and hold harmless and defend each of the Indemnitees as herein provided. If any claim indemnified hereunder has not been settled or discharged when the Work is completed, final payment of the Contract Sum shall not be due, unless and until Construction Contractor provides a (i) bond issued by a bonding company satisfactory to Owner, (ii) other security acceptable in an amount equal to 150% of the amount of any such claim, including interest on such claim as estimated by Owner, or (iii) other security acceptable to Owner, which bond or other security shall be in form and substance satisfactory to Owner and shall be subject to such increase as Owner may from time to time require as interest accrues on such claim.

18. Confidentiality: Construction Contractor shall not divulge information concerning the Contract Documents or any Work to anyone (including information in applications for permits, variances, etc.) without Owner's prior written consent. Owner reserves the right to control the release of all information relating to the Project, including the timing of any release, together with its form and content. This requirement shall survive the expiration of the Contract Documents.
19. Non-Waiver: No action or failure to act by Owner or Construction Contractor shall constitute a waiver of any right or duty afforded either of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
20. Notice: All notices required or permitted to be given by the Contract Documents shall be in writing and given in accordance with this Section. Written notice shall be deemed to have been duly served only if (i) intended for Construction Contractor, delivered in person to Construction Contractor's project superintendent at the Site, or (ii) if mailed, within three calendar days after the date it is sent by either registered or certified mail, or (iii) if sent by overnight courier, on the weekday (which is not a holiday) after it is delivered to such overnight courier in sufficient time for next day delivery, in each case for clauses (ii) and (iii) addressed to Owner or Construction Contractor, as the case may be, at the respective address for such notice to be given provided in the Agreement. Either party may change the respective address for receipt of notices under clauses (ii) and (iii) by furnishing at least 10 business days advance written notice of such change in address to the other party.
21. Undue Influence: Construction Contractor has not and shall not, directly or indirectly, provide funds or other considerations to any person or entity (including Owner and Owner's employees and agents), improperly to procure special or unusual treatment with respect to the Contract Documents or for the purpose of otherwise improperly influencing the relationship between Owner and Construction Contractor relating to the Project.
22. Assignment: Construction Contractor shall not assign any portion of the Project, Work or Contract Documents without prior written permission to do so from Owner.
23. Governing Law: This Agreement will be governed and interpreted by the internal laws of the state where the project is located without reference to the conflict of law rules.
24. Disputes: In the event of any dispute whatsoever between Owner and Construction Contractor, Construction Contractor shall continue to proceed diligently with performance as required by the Contract Documents. The parties shall make reasonable efforts to resolve each dispute within 30 days from the time the parties have knowledge of the existence of such dispute; provided, however, in no event shall delay in such determination excuse prompt and proper performance of the Work or payment of undisputed sums as required by the Contract Documents.
25. Supplier Diversity Development Program: Owner actively seeks out historically under-utilized businesses ("HUB's") which are qualified to fulfill Owner's requirements for goods and services purchased. If Construction Contractor meets the state or federal qualifications to be a HUB, Construction Contractor is encouraged to submit documentation supporting such status to Owner with the Agreement. Owner's Supplier Diversity Development Program ("SDDP") is committed to supporting HUBs with a focus on Minority and Women Business Enterprises and has taken affirmative steps to provide opportunities for their growth and participation in Owner's procurement process. Owner's primary suppliers, such as Construction Contractor, are asked if it is feasible and, if using subcontractors to provide Work, including labor and materials, required by Owner pursuant to the Contract Documents, to subcontract with HUBs. Owner will consider the level of Construction Contractor participation in SDDP before entering into the Agreement with Construction Contractor and in the quarterly evaluation of Construction Contractor's performance under the Contract Documents. If Construction Contractor utilizes one or more HUBs as subcontractors, Construction Contractor shall submit a quarterly report of such utilization to Owner on Owner's SDDP form. SDDP underscores Owner's commitment to increase procurement activity with HUBs on a corporate-wide basis. Owner has a goal to utilize HUBs for an amount equal to 5% of the dollar amount of

Owner's purchases. Construction Contractor further acknowledges that upon Owner's request, Construction Contractor will use its best efforts to use Minority and Women Business Enterprise ("M/WBE"), Small Disadvantaged Business ("SDB"), and Small Business Enterprise ("SBE") (each as certified by the appropriate state or local body responsible for such certification) as subcontractors. If Construction Contractor uses M/WBE, SDB or SBE vendor(s), then Owner and Construction Contractor will agree to the guidelines regarding the use of such vendors, in order to ensure that Construction Contractor provides the Work, including labor and materials, according to the terms of the Contract Documents. The provisions of this Section 25 shall not modify or otherwise affect Construction Contractor's obligation under Section 8.

26. Termination by Construction Contractor: If the Work is stopped in whole or in substantial part for a period of 180 days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Construction Contractor or any subcontractor or any of their employees or agents, or if the Work in whole or in substantial part is stopped for a period of 60 days by Construction Contractor because Owner has not made payment of undisputed amounts therefor (other than as permitted by the Contract Documents), then Construction Contractor may, upon 30 additional days' written notice to Owner, terminate the Contract Documents and recover from Owner payment for all Work properly executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery together with reasonable out-of-pocket costs incurred by Construction Contractor in shutting down the Work; provided, however, that Construction Contractor shall in no event be entitled to recover for lost profits or consequential or other damages.
27. Termination By Owner:
- (a) Owner may terminate the Contract Documents at any time without cause and without prior notice to Construction Contractor, and in such event, Owner will pay Construction Contractor for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the Work completed as of the date of termination. Owner will not be responsible to reimburse Construction Contractor for any continuing contractual commitment to subcontractors or for penalties or damages for canceling such contractual commitments inasmuch as Construction Contractor shall make all subcontracts and other commitments subject to this provision. In the event of termination by Owner, Owner may require Construction Contractor promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which Owner in its sole discretion chooses to take by assignment, and in such event, Construction Contractor shall promptly execute and deliver to Owner written assignment of the same. Owner shall reimburse Construction Contractor for taking possession and use of any materials, equipment, tools, construction equipment and machinery on the Site as set forth in Section (b)(i) and (ii) below.
 - (b) If Construction Contractor is adjudged as bankrupt, or if Construction Contractor makes a general assignment for the benefit of Construction Contractor's creditors, or if a receiver is appointed on account of Construction Contractor's insolvency, or if any provision of the bankruptcy law is invoked by or against Construction Contractor, or if Construction Contractor persistently or repeatedly refuses or fails (except in cases for which extension of Completion Schedule is provided) to supply enough properly skilled workmen or proper materials, or if Construction Contractor fails to make proper payment for materials or labor, or disregards any Government Requirements, or if Construction Contractor fails to perform and prosecute the Work properly, or fails to complete the Work entirely on or before any date established for partial or final completion, or a labor dispute causes substantial disruptions or delays, through work stoppages, picketing, jurisdictional disputes or similar actions or failures to act by subcontractors or, without limitation, otherwise fails to perform any provisions of the Contract Documents, then notwithstanding any other rights or remedies granted Owner under the Contract Documents, Owner may, without prejudice to any other right or remedy (i) terminate the employment of Construction Contractor and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Construction Contractor (to the extent any of same

have not been paid for by Owner, Owner shall lease same from Construction Contractor at a rate equal to 80% of the standard book rate as reflected in the Rental Rate Blue Book for Construction, latest edition), (ii) use Construction Contractor's equipment for which Owner was paying a leasing fee so long as Owner continues to pay such leasing fee, and/or (iii) may finish the Work by whatever method Owner may deem expedient. In such case, Construction Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum plus leasing fees referred to in (ii) above shall exceed: (1) the expense of completing the Work including compensation for additional managerial and administrative services, plus (2) Owner's losses and damages because of Construction Contractor's default, such excess shall be paid to Construction Contractor. If such expense plus Owner's losses and damages shall exceed such unpaid balance, Construction Contractor shall pay the difference to Owner promptly on demand and Owner may resort to any other rights or remedies Owner may have by law or under the Contract Documents.

28. Time: All time limits stated in the Contract Documents for the performance of Construction Contractor's obligations are of the essence. If Construction Contractor is delayed at any time in the progress of the Work by (i) any act of Owner not permitted pursuant to the Contract Documents, (ii) changes in the Work ordered by Owner, unless due to deficiencies in the plans which Construction Contractor should have discovered, (iii) fire or other unavoidable casualties, (iv) labor disputes, (v) unusual delay in transportation, (vi) uncustomary adverse weather conditions not reasonably anticipated, or (vii) delay authorized by Owner, then the contract time, including applicable portions of the Completion Schedule, shall be extended by change order for such time as Owner may determine. In no event shall any such extension of contract time, including applicable portions of the Completion Schedule, exceed the actual period of time lost by reason of the causes aforesaid.

**SCHEDULE A
INSURANCE
OWNER CONTROLLED INSURANCE PROGRAM
Bank One - Delaware Projects**

A. Owner Controlled Insurance Program

The Owner has elected to implement an Owner Controlled Insurance Program (OCIP) that will provide Workers' Compensation, Employer's Liability, General Liability and Excess Liability Insurance for the Construction Manager and all eligible Contractors of every tier providing direct labor on the Project. The Owner agrees to pay all premium associated with the OCIP including deductibles or self-insured retention unless otherwise stated in the Contract Documents.

The Owner will also provide Builder's Risk coverage as outlined in Section G (4).

Eligible Contractors include all contractors providing direct labor on the project site (see definition of ineligible contractors below). Temporary labor services and leasing companies that include direct labor on the project site are to be treated as a contractor.

B. Applicability of the OCIP

The following types of contractors (hereinafter called ineligible contractors) shall not be eligible for coverage in the OCIP: consultants, suppliers, vendors, materials dealers, guard services, janitorial services, truckers (including trucking to the project where delivery is the only scope of work performed), and other temporary project services. In addition to the above, the Owner may choose not to include in the OCIP contractors of any tier whose contract, on a single basis, does not exceed \$10,000 in value. Ineligible contractors shall be required to maintain their own insurance of the types and with the limits as set forth in Section L, at their own expense, and shall promptly furnish the Owner, or its designated representative, certificates of insurance giving evidence that all required insurance is in force.

C. Insurance Cost Identification

The Construction Manager and all eligible Contractors shall identify the cost of insurance on the Project, Form 2. The Construction Manager and all Contractors of every tier agree to identify all costs associated with the cost of insurance for all work, including but not limited to insurance premiums, expected losses within any retention or deductible program (loss rate), claims handling charges, service and broker fees, overhead and profit, using Form 2 (Insurance Cost Identification Worksheet). By completing and submitting this insurance cost information, including supporting documents to the Owner, Construction Manager and Contractors warrant that all cost for insurance as described in this paragraph have been correctly identified. Coverage and limit requirements are:

(1) Workers' Compensation and Employer's Liability Insurance:

WORKERS' COMPENSATION INSURANCE WITH Statutory Benefits as provided by state statute; and EMPLOYER'S LIABILITY LIMITS:

- (a) \$500,000 Bodily Injury each Accident
- (b) \$500,000 Bodily Injury by Disease – Policy Limit
- (c) \$500,000 Bodily Injury by Disease – Each Employee

(2) Commercial General Liability and Insurance:

- (a) Bodily Injury, Property Damage and General Aggregate limits as required in Article V.
- (b) The limits required in Article V. can be satisfied by a combination of general and umbrella liability policies.
- (c) Coverage should include but not be limited to the following supplementary coverage:

- (i) Contractual Liability to cover liability assumed under this agreement,
- (ii) Product and Completed Operations Liability Insurance,
- (iii) Broad Form Property Damage Liability Insurance,
- (iv) Explosion, collapse and underground hazards (deletion of the X,C,U exclusions) if such exposure exist, and
- (v) Independent Contractors.

Construction Manager and all eligible Contractors will provide Owner, or its designated Program Administrator and/or insurance carrier, with supporting documentation to verify the workers' compensation, general liability and umbrella liability rates to be used throughout the project to determine the Construction Manager's and Contractors' insurance credits. The insurance rates agreed to prior to execution of this agreement will be the rates used to calculate the final insurance credit for Construction Manager and each eligible Contractor of every tier. Any eligible Contractor of any tier that does not enroll in the OCIP will have a minimum 6% of their contract amount automatically deducted for their insurance credit.

Construction Manager and all eligible Contractors will be required to provide copies of their current declaration pages and premium rate pages for their workers' compensation, general liability and umbrella liability policies to verify the rates they are utilizing on the Insurance Cost Identification Worksheet. If eligible Contractors have insurance policies with deductibles or other loss sensitive programs, they must provide copies of the past five years audited workers' compensation payrolls, currently dated claim loss runs for those same five years for their workers compensation and general liability policies and copies of their deductible or program agreement with their insurance carrier to support the calculation of the loss rate and fixed cost (premium) rate being utilized. If eligible Contractor does not provide this information, the rates for the insurance credit will be calculated using one of the following two methods: 1) the OCIP carrier's manual rates for workers' compensation and general liability insurance or 2) the loss sensitive rates at maximum cost (the fixed cost plus the aggregate loss cost plus claims handling charges plus insurance agent/broker fee) for general liability and workers' compensation insurance.

It is understood and agreed, Construction Manager's and Contractors' insurance cost identified on their Insurance Cost Identification Worksheet, Form 2, is an initial estimate only. The final insurance cost will be subject to final audited payrolls, and if applicable, contract amount and cost of subcontracted work, multiplied by the appropriate insurance rates as agreed to prior to the start of the work. Because the OCIP is subject to a minimum premium, the final insurance credits for Construction Manager and each eligible Contractor of every tier will be subject to their minimum insurance credit and are only subject to an additional deductive change order/charge, not a credit/return. The contract award will be based on the total estimated cost of work including insurance costs. An initial deductive change order will be processed to transfer the insurance cost into the project insurance program. During the term of the contract, including extended periods thereof, the Owner shall have the right to recover all costs for insurance as described in Section C (1), (2), and (3) and Section D that are in addition to those initially identified in the initial deductive change order. The Owner shall have the right to recover these additional costs through deductive change orders.

Contractors of every tier shall complete and submit the Insurance Cost Identification Worksheet, Form 2 as part of their bid to Construction Manager. Construction Manager shall promptly provide copies of such Form 2's to Owner.

D. Change Order Pricing

Construction Manager shall price, and shall require that all eligible Contractors price change order pricing equal to or greater than fifty thousand dollars (\$50,000) to include the cost to provide insurance as specified in Section C using Construction Manager's and Contractors' previously agreed upon rates, and shall identify the amount of insurance contained in the change order proposal using the Supplemental Insurance Information Form, Form 3.

The Construction Manager's and eligible Contractors' price shall be adjusted by removing the cost of insurance as identified on Form 3. The Owner shall have the right to recover these additional costs through deductive change orders.

E. Responsibility for Contractors

The Construction Manager and its Contractors shall require each of their eligible subcontractors to identify the cost for the coverage associated with the work performed for or on their behalf as outlined in this agreement using the methods and documents described herein. Any eligible Contractor not enrolled in the OCIP will automatically have a minimum of 6% of their contract amount deducted from their contract for their insurance credit.

The Contractor shall include all of the provisions of this agreement in every subcontract so that such provisions will be binding upon each of its subcontractors.

F. Audit and Recovery of "Insurance Cost"

For insurance purposes, Construction Manager and Contractors of every tier agree, and shall require all tiers of subcontractors to agree, to keep and maintain accurate and classified records of its payroll for operations at the project site. Construction Manager and Contractors further agree, and will require all tiers of subcontractors to agree, to furnish to the Program Administrator (the insurance company and Willis) full and accurate payroll data and information in accordance with the requirements of the OCIP Project Insurance Manual, incorporated herein by this reference. Construction Manager and all Contractors shall permit the Owner or its representative to examine and/or audit its relevant books and records. Construction Manager and Contractors shall also provide any additional relevant information to Construction Manager or its appointed representatives as may be required. During the term of the Contractor's contract including extended periods thereof, the Construction Manager shall have the right to adjust the contract price to reflect the cost of the Contractors' insurance costs had the Owner not implemented an OCIP.

G. Sponsor Provided Coverage

The Owner, at its sole expense, has implemented an Owner Controlled Insurance Program (OCIP) to furnish certain insurance coverage with respects to on-site activities. All policies shall be issued by companies rated A- IX or higher in the most recent A.M. Best ratings. The OCIP will be for the benefit of the Owner, Construction Manager and its eligible Contractors of all tiers (unless specifically excluded) who have on-site employees. Such coverage applies only to work performed under this contract at the Project Site. Construction Manager and eligible Contractors must provide their own insurance for off-site activities that complies with Section L.

The Owner, at its sole expense, will provide and maintain in force the types of insurance listed in subparagraphs (1) through (4) below as a part of the OCIP for Construction Manager and all enrolled/eligible Contractors. Construction Manager and all enrolled Contractors will each receive their own workers' compensation policies and Construction Manager and all enrolled Contractors will be named as Additional Named Insureds on the master commercial general liability and excess liability policies. Construction Manager and all enrolled Contractors will receive certificates of insurance evidencing that they are Additional Named Insureds on the master commercial general liability and excess liability policies. Construction Manager and Contractors enrolled in the OCIP agree that the policy limits of liability, coverage terms, conditions and exclusions shall determine the scope of coverage provided by the OCIP. Construction Manager Contractors agree that the purpose of this section is to provide a general understanding of the coverage provided by the OCIP.

(1) Workers' Compensation and Employer's Liability Insurance will be provided in accordance with applicable State laws. Limits of Liability and coverage will be as follows:

- (a) Workers' Compensation, form WC 00 00 00 A – Applicable State Statutory Benefits
- (b) Employer's Liability

- (i) \$1,000,000 Bodily Injury each Accident
- (ii) \$1,000,000 Bodily Injury by Disease – Policy Limit
- (iii) \$1,000,000 Bodily Injury by Disease – Each Employee

(c) Employers Liability Exclusions:

- (i) liability assumed under a contract;
- (ii) punitive or exemplary damages;
- (iii) bodily injury to an employee while knowingly employed in violation of the law;
- (iv) obligations imposed by a workers compensation, occupational disease or similar law;
- (v) bodily injury intentionally caused or aggravated by the insured;
- (vi) bodily injury occurring outside of the United States of America;
- (vii) any personnel practices, policies acts or omissions;
- (viii) bodily injury to any person subject to any federal workers or workmen's compensation law or occupational disease law;
- (ix) bodily injury to any person in work subject to the Federal Employers' Liability Act;
- (x) bodily injury to a master or member of the crew of any vessel;
- (xi) fines or penalties imposed for violation of federal or state law;
- (xii) damages payable under the Migrant and Seasonal Agricultural Worker Protection Act.

(2) Commercial General Liability Insurance will be provided on an "occurrence" form under a master liability policy with the following Limits of Liability, Coverage, and Terms:

(a) Limit of Liability:

\$1,000,000 Combined Single Limit any one occurrence and \$2,000,000 in the aggregate annually

(b) Coverage and Terms:

- (i) Occurrence Basis, CG 00 01 (10/01 edition date);
- (ii) Blanket Additional Insured endorsement (excluding completed operations)
- (iii) Blanket Contractual Liability;
- (iv) Products and Completed Operations (Two Year Term); with a term aggregate of \$2,000,000;
- (v) Independent Contractor's Liability;
- (vi) Personal Injury;
- (vii) Explosion, Collapse, and Underground (X, C, U exclusions deleted), and
- (viii) Designated Premises Only.

(c) Exclusions:

- (i) Expected or Intended Injury;
- (ii) Contractual Liability;
- (iii) Liquor Liability;
- (iv) Workers' Compensation and Similar Laws;
- (v) Employer's Liability;
- (vi) Aircraft, Auto or Watercraft;
- (vii) Mobile Equipment;
- (viii) War;
- (ix) Damage to Property;
- (x) Damage To Your Product;
- (xi) Damage To Your Work;
- (xii) Damage To Impaired Property Or Property Not Physically Injured;
- (xiii) Recall of Products, Work Or Impaired Property;
- (xiv) Employment Related Practices, form CG 21 47 (edition 7/98);

- (xv) Total Pollution Exclusion With A Hostile Fire Exception, form CG 21 55 (edition 9/99);
- (xvi) Exclusion- Engineers, Architects Or Surveyors Professional Liability, form CG 22 43 (edition 7/98);
- (xvii) Exclusion- Contractors- Professional Liability, form CG 22 79 (edition 7/98);
- (xviii) Total Lead Exclusion, form 58332 (edition 7/93);
- (xix) Radioactive Matter Exclusion, form 62898 (edition 9/01);
- (xx) Asbestos Exclusion Endorsement, form 65165 (edition 9/01);
- (xxi) Exclusion For Continuing Or Progressive "Bodily Injury", "Personal And Advertising Injury" Or "Property Damage", (manuscript form);
- (xxii) Fungus Exclusion, form 78689 (edition 8/01);
- (xxiii) Nuclear Energy Liability Exclusion Endorsement (Broad Form), form IL 00 21 (edition 4/98);

Additional Exclusions for Medical Payments:

- (i) Any Insured;
- (ii) Hired Person;
- (iii) Injury On Normally Occupied Premises;
- (iv) Workers Compensation And Similar Laws;
- (v) Athletic Activities;
- (vi) Products-Completed Operations Hazard;

Exclusions for Personal and Advertising Injury Liability:

- (i) Knowing Violation Of Rights Of Another;
- (ii) Material Published With Knowledge Of Falsity;
- (iii) Material Published Prior To Policy Period;
- (iv) Criminal Acts;
- (v) Contractual Liability;
- (vi) Breach Of Contract;
- (vii) Quality Of Performance Of Goods- Failure To Conform To Statements;
- (viii) Wrong Description Of Prices
- (ix) Infringement Of Copyright, Patent, Trademark Or Trade Secret;
- (x) Insureds In Media And Internet Type Business;
- (xi) Electronic Chatrooms Or Bulletin Boards;
- (xii) Unauthorized Use Of Another's Name Or Product;
- (xiii) Pollution;
- (xiv) Pollution- Related;

Additional Exclusions for Additional Insured- Owner, Lessees Or Contractors- Scheduled Person Or Organization, form CG 20 10 (edition 10/01):

- (i) This insurance does not apply to "bodily injury" or "property damage" occurring after:
 - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
 - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

(3) Excess Liability Insurance will be provided under a master liability policy with Limits of Liability, Coverages, and Terms as follows:

(a) Limits of Liability:

- (i) \$100,000,000 Any one occurrence and general aggregate annually; and
- (ii) \$100,000,000 Term Aggregate Products and Completed Operations.

(b) Coverage and Terms:

- (i) Excess of General Liability
- (ii) Excess of Employer's Liability
- (iii) Excess Completed Operations (Two Year Term)

(4) Builder's Risk Insurance

The Builder's Risk Insurance will provide Cause of Loss, Special (All-Risk) coverage on a replacement cost basis for the entire construction value, including change orders. This insurance will include as additional insureds Construction Manager and all tiers of Contractors in the Work. The policy includes 1) a waiver of subrogation for Construction Manager and all Contractors of every tier, 2) a sublimit of \$1,000,000 each claim for off-premises storage of materials and transit to the job-site and 3) a \$10,000,000 sublimit for flood and earthquake coverage. In addition to the standard policy exclusions, the policy may contain a terrorism exclusion.

The Builder's Risk will not provide coverage against loss including by theft or disappearance, of any materials (unless the materials are to be incorporated into the Project), tools, or equipment of the Construction Manager or any tier of Contractor, or any other person furnishing labor or materials for the Work.

All tiers of Contractor shall be responsible for the first \$25,000 of each and every loss.

Any loss insured under Exhibit I, G(4) is to be adjusted with the Owner and made payable to the Owner as fiduciary for the additional insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. The Construction Manager shall pay each Contractor a just share of any insurance monies received by the Construction Manager, and Construction Manager shall require each Contractor to make payments to his subcontractors in a similar manner. Construction Manager agrees to reconstruct any portion of the Work lost, destroyed or damaged to the extent that Owner makes the proceeds of the insurance (and additional funds if such proceeds are less than replacement cost) available to Construction Manager.

The Owner will make available upon request for inspection by Construction Manager a certificate of Insurance evidencing builder's risk insurance to be furnished by Owner.

H. OCIP Certificates and Policies

All OCIP furnished insurance coverage outlined above shall be written by insurance companies approved by the Owner. The Owner, through the Program Administrator, shall provide all Contractor(s) with appropriate certificates of insurance evidencing the coverage outlined above.

I. Termination/Modification of the OCIP

The Owner reserves the right to terminate or to modify the OCIP or any portion thereof. To exercise this right, the Owner shall provide thirty (30) days advance written notice of termination or material modification to Construction Manager and all Contractor(s) covered by the OCIP. The Construction Manager and all Contractors shall promptly obtain quotations for appropriate replacement insurance coverage and shall review such quotes with Owner. If such quotations are reasonably acceptable to Owner, then Construction Manager and Contractors shall promptly bind such replacement coverage at Owner's expense (except as noted below in this subparagraph I). If quotations obtained by Construction Manager or any of the Contractors are not reasonably acceptable to Owner, Owner and Construction Manager shall work together to identify appropriate replacement insurance coverage that is reasonably acceptable to the Owner. The actual documented cost of such replacement insurance will be reimbursed by the Owner, except as noted below in this subparagraph I. Written evidence of such insurance shall be provided to the Owner prior to the effective date of the termination or modification of the OCIP. The minimum acceptable coverage and limits of liability are as required in Section C. In addition, Construction Manager's umbrella liability policy limit of liability will be not less than \$100,000,000 each occurrence and aggregate.

J. Construction Manager and Contractors' Responsibilities

The Construction Manager and Contractors are required to cooperate with the Owner's Representative, Construction Manager, Program Administrator and insurance carriers with regards to the administration and operation of the OCIP. The Construction Manager and Contractors' responsibilities shall include, but not be limited to:

- (1) Complying with applicable construction safety requirements, the OCIP Project Manual and Claims Procedures as outlined in the respective manuals setting forth the administrative procedures required of the Construction Manager and Contractors;
- (2) Providing of necessary contract, operations and insurance information;
- (3) Immediately notifying the Program Administrator of all Contractors upon award of a contract by completing Form-1, Notice of Subcontract Award and Request for Insurance and sending to the Program Administrator;
- (4) Maintaining payroll records and other records as necessary for premium and insurance credit computation;
- (5) Cooperating with the insurance company and the Program Administrator with respect to requests for claims, payroll or other information required under the program;
- (6) Immediately notifying the Program Administrator when any Contractor-Provided Coverage have been canceled, materially changed, or not been renewed; and,
- (7) Timely completion of OCIP Forms:
 - (a) Construction Manager will complete a Notice of Subcontract Award and Request for Insurance – Form 1, upon award of each (Contractor) contract;
 - (b) Construction Manager and eligible Contractors of every tier will complete an Insurance Information Form – Form 2, upon award of a (Contractor) contract;
 - (c) Contractor will complete a Notice of Subcontract Award and Request For Insurance – Form 1, upon award of a (Contractor) contract to a second or third tier subcontractor.
 - (d) Construction Manager will complete a Notice of Completion – Form 4, upon completion of all work being performed under a Contractor's contract.
 - (e) Contractor will complete a Supplemental Insurance Information Form – Form 3, upon execution of any change order in excess of \$50,000.

Failure to follow the procedures outlined in the OCIP Project and Claims Procedures Manual or this Exhibit may result in withholding progress payments or contract default.

K. Assignment of Return Premiums

The Owner will be responsible for the payment of all premiums associated solely with the OCIP and Builders' Risk and will be the sole recipient of any dividend(s) and/or return premium(s) generated by either. In consideration of the Owner providing of said coverage the Construction Manager and all eligible Contractor(s) agree to:

- (1) Identify all applicable insurance costs in their contract price, and cooperate with the Program Administrator in the confirmation of the Contractor's insurance cost.
- (2) Irrevocably assigned to and for the benefit of the Owner, all return premiums, premium discounts, dividends, retentions, credits, and any other monies due the Owner in connection with the

insurance which herein it agrees to provide, and Construction Manager and eligible Contractors agree to evidence same by signing Form 2. The Construction Manager and all eligible Contractors further agree to require each subcontractor of any tier to execute the assignment on Form 2, for the benefit of the Owner.

L. Contractor Provided Coverage

For any work under this contract, and until completion and final acceptance of the work all ineligible Contractors as defined in Section B of this document shall provide certificates of insurance to Construction Manager giving evidence that coverage is in force, as required in Section C. The project site should be shown on the certificate and the Owner, Construction Manager and their directors, officers, representatives, agents and employees shall be endorsed as Additional Insureds on the Commercial General Liability Policy and Automobile Policy.

For any work under this contract, and until completion and final acceptance of the work, Construction Manager and all Contractors, at their own expense shall promptly furnish to the Owner certificates of insurance giving evidence that the following coverages are in force:

(1) Automobile Liability Insurance

\$1,000,000 combined single limit for bodily injury and property damage insuring all owned, non-owned and hired automobiles.

(2) Workers' Compensation and Employer's Liability Insurance (Off-site activities only for Construction Manager and enrolled/eligible Contractors):

Statutory Limits with Other States Endorsement and minimum Employer's Liability Limits as follows:

- (a) \$500,000 Bodily Injury each Accident
- (b) \$500,000 Bodily Injury by Disease – Policy Limit
- (c) \$500,000 Bodily Injury by Disease – Each Employee

(3) Commercial General Liability Insurance (Off-site activities only for Construction Manager and enrolled/eligible Contractors):

- (a) Commercial General Liability with a limit of liability as required in Article V. for bodily injury, property damage and personal injury, including the following coverages. (The limits can be satisfied by a combination of general and umbrella liability policies.)

- (i) Occurrence Basis;
- (ii) Premises Operations;
- (iii) Contractual Liability;
- (iv) Products/Completed Operations;
- (v) Broad Form Property Damage; and
- (vi) Independent Contractors.

- (4) The Owner, Owner's Representative, Construction Manager and their directors, officers, representatives, agents and employees shall be endorsed as Additional Insureds on the Commercial General Liability and Automobile Liability policies as listed in Article U.

(5) Contractors' Pollution Liability Insurance

- (a) This coverage is required of Construction Manager and all Contractors.
- (b) Limits of Liability of \$2,000,000 each claim and aggregate with a deductible no greater than \$100,000 each claim.

- (c) The policy will provide coverage for sums that Construction Manager and Contractors become legally obligated to pay as loss as a result of claims for bodily injury, property damage or clean-up costs caused by pollution incident. Pollution incidents will include the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, hydrocarbons and microbial matter, including fungi, bacterial or viral matter which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.
 - (d) If the policy maintained by Construction Manager and/or Contractors is a "claims made" form, Construction Manager and/or Contractors will maintain this required coverage for four years after completion of the project.
- (6) Professional Liability Insurance (Errors & Omissions)**
- (a) The Construction Manager and all Contractors whose contracts require design services will maintain professional liability insurance providing coverage for claims allegedly arising out of errors, omissions or negligent acts due to their performance, or failure to perform, design, architectural, engineering, land surveying or interior design.
 - (b) Limits of liability of not less than \$2,000,000 each claim and annual aggregate with a deductible no greater than \$100,000.

M. Certificate of Insurance

All required insurance shall be maintained without interruption from the date of commencement of the work under the agreement until the date of the final payment. The Construction Manager will provide Owner and the Contractors will provide the Construction Manager with a certificate of insurance evidencing compliance with the coverages, limits and conditions required in Section L until the date of final payments.

N. Notice of Cancellation

Policies and/or certificates of insurance shall specifically provide a thirty (30) day notice of cancellation, non-renewal or material change to be sent to the Owner and Construction Manager.

O. Other Insurance

Any type of insurance or any increase of limits of liability not described above which a Contractor requires for its own protection or on account of any statute shall be its own responsibility and its own expense.

P. Contractor Participation

Upon the execution of any subcontract, the Construction Manager will immediately report that subcontract to the Program Administrator for enrollment in the OCIP. The Contractor shall incorporate all the provisions of this agreement in any subcontractor agreement and shall cause its Contractors to cooperate fully with the Owner, Construction Manager, Program Administrator and insurance companies for the project, in the administration of the OCIP. The Contractor agrees to cooperate in the safety and accident prevention program and claim handling procedures as established for the project. In accordance with this paragraph Construction Manager shall not permit any eligible Contractor of any tier to enter the project site prior to notifying the Program Administrator, by completion of Form 1, of the Contractor's enrollment in the Owner Controlled Insurance Program (OCIP); failure to do so may negate the afforded coverage(s).

Q. Waiver of Subrogation

The Construction Manager and all Contractors waive all rights of subrogation and recovery against the Owner, Willis, Construction Manager and other Contractor(s) of all tiers to the extent of any loss or damage, which is insured under the OCIP. Notwithstanding the foregoing and not by way of limitation of the same, Contractor waives its rights of subrogation and recovery for damage to any property or equipment against the Owner, Willis, Construction Manager and other Contractor(s) of all tiers. Each Contractor shall require all subcontractor(s) to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their work.

R. No Release

The carrying of the above-described insurance shall in no way be interpreted as relieving the Construction Manager or Contractors of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

S. Approval of Forms and Companies

All insurance described in this agreement shall be written by an insurance company or companies reasonably satisfactory to the Owner and licensed to do business in Maryland and shall be in a form and content reasonably satisfactory to the Owner. No party subject to the provisions of this agreement shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.

T. The Project OCIP Project and Claims Procedures Manual

The Construction Manager and all Contractors shall adhere to and perform all reporting requirements as detailed in the OCIP Insurance Project and Claims Procedures Manual. Failure to follow the procedures outlined in the manual may result in fines being assessed by the appropriate state agencies or commissions or default judgments from a lawsuit against Owner, Construction Manager or the Contractor. The Contractor, shall at it's own expense, be responsible for any fines or judgments arising out of failure to follow these procedures.

U. Additional Insureds:

- Banc One Building Corporation, its parent and affiliates, directors, officers, representatives, agents and employees
- Tishman Construction Corporation
- Tishman Construction Corporation of Maryland
- Gensler (architect)
- EYP Mission Critical Facilities, Inc. (engineer)
- and their directors, officers, representatives, agents and employees

V. General Liability/Umbrella Liability Requirements

The following limits of liability apply based on Contractors' trade classification. The limits required can be satisfied by a combination of general and umbrella liability policies.

BASE BUILDING/CORE & SHELL

<u>Trade Classification</u>	<u>Per Occurrence and General Aggregate Combined Single Limit</u>
Access Flooring	\$ 3,000,000
Acoustical Ceilings	\$ 2,000,000
Architectural Woodworking	\$ 3,000,000
Balcony Railings	\$ 5,000,000

<u>Trade Classification</u>	<u>Per Occurrence and General Aggregate Combined Single Limit</u>
Carpentry, Drywall & Insulation	\$10,000,000
Carpeting	\$ 2,000,000
Caulking & Sealing	\$ 5,000,000
Ceramic Tile	\$ 2,000,000
Concrete Work	\$10,000,000
Convactor Enclosures	\$ 3,000,000
Cranes	\$25,000,000
Curtain Wall	\$10,000,000
Demolition	\$20,000,000
Electrical	\$10,000,000
Elevator Entrances	\$10,000,000
Elevators	\$10,000,000
Excavation & Foundation	\$10,000,000
Fireplaces	\$ 2,000,000
Food Service Equipment	\$ 2,000,000
Glass & Glazing	\$10,000,000
Granite Façade	\$10,000,000
Hoists	\$25,000,000
HVAC	\$10,000,000
Landscaping	\$ 5,000,000
Lath & Plaster	\$ 3,000,000
Lobby Finishes	\$ 3,000,000
Lockers	\$ 2,000,000
Louvers	\$ 3,000,000
Masonry	\$10,000,000
Mirrors	\$ 3,000,000
Miscellaneous Iron	\$10,000,000
Ornamental Metals	\$ 5,000,000
Painting & Finishing	\$ 2,000,000
Piling	\$10,000,000
Plumbing	\$10,000,000
Progress Photographs	\$ 2,000,000
Refuse Chute (Construction)	\$10,000,000
Resilient Flooring	\$ 2,000,000
Roll-Up Doors	\$ 3,000,000
Roofing, Waterproofing & Sheetmetal	\$10,000,000
Rubbish Removal (Construction)	\$ 5,000,000

<u>Trade Classification</u>	<u>Per Occurrence and General Aggregate Combined Single Limit</u>
Caulking & Sealing	\$ 1,000,000
Ceramic Tile	\$ 1,000,000
Concrete Work	\$ 3,000,000
Cranes	\$25,000,000
Demolition	\$ 5,000,000
Drywall	\$ 2,000,000
Electrical	\$ 3,000,000
Elevators	\$ 5,000,000
Facade Cleaning	\$ 5,000,000
General Contractor	\$10,000,000
Glass & Glazing	\$ 3,000,000
Hoists	\$25,000,000
HVAC	\$ 3,000,000
Lath & Plaster	\$ 2,000,000
Lockers	\$ 1,000,000
Masonry/Stone	\$ 3,000,000
Metal Toilet Partitions & Accessories	\$ 1,000,000
Ornamental Misc. Metals	\$ 2,000,000
Painting & Finishing	\$ 1,000,000
Plumbing	\$ 3,000,000
Resilient Flooring	\$ 1,000,000
Roofing & Sheet Metal	\$ 3,000,000
Scaffolding	\$20,000,000
Signs & Graphics	\$ 1,000,000
Sprayed Fireproofing	\$ 2,000,000
Sprinkler System	\$ 3,000,000
Structural Steel	\$ 5,000,000
Waterproofing	\$ 1,000,000